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May 15, 1995

BURTON W. OLIVER
Executive Director

Mr. T--- L. P---
Law Offices of A---, P--- & A---
XXX South --- Street, Suite XXX
--- ---, CA XXXXX-XXXX

Re: J--- R---

Dear Mr. P---:

This is in response to your letter dated February 15, 1995 regarding the application of tax to your client's use of an aircraft he purchased. You state:

"J--- R--- ('R---') is a California resident. On January 5, 1995, R--- accepted delivery of and took title to a Grumman Gulfstream III, -XXXXX ('the aircraft'). The aircraft (carrying a passenger) was first flown into California on January 12, 1995. On February 5, 1995, the aircraft was delivered to a company in Florida to complete a major refurbishing of the aircraft. It is anticipated that it will take three months to complete the refurbishment. At the time the aircraft was purchased, a jet engine ('jet engine') was also purchased. At the time of the purchase, the jet engine was located in Canada where it is anticipated it will undergo maintenance which will take approximately two months. After the maintenance is complete, the jet engine will be shipped to Florida and attached to the aircraft."

You state that R--- wishes for us to "rule that the refurbishment of the aircraft in Florida will be considered 'used or stored outside of California' for purposes of Regulation 1620(b)(3) so that if the time it takes to refurbish the aircraft, aggregated [with] other out of state uses, equals or exceeds three months during the six-month period ending July 12, 1995, then no California sales or use tax will apply to the aircraft."

You explain that R--- also wants us to confirm that "no California sales or use tax will apply to the jet engine if it does not enter California until after April 5, 1995."

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

It is clear from the facts you provide that the jet engine was purchased outside this state. From your statements regarding when the aircraft entered California, it appears that the aircraft was also purchased outside this state. Since the sales took place outside of California, the sales tax does not apply, but if the property was purchased for use in this state, R--- owes use tax measured by the purchase price of the property unless the use is exempt from tax.

Property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property (use for which the property is designed) is in California. (Reg. 1620(b)(3).) You state that when the aircraft entered California, it was already carrying a passenger. Thus, its first functional use took place outside of California at the place where the aircraft's flight with the passenger aboard commenced.

Revenue and Taxation Code section 6246 provides a presumption that tangible personal property shipped or brought into this state by a purchaser was purchased for use in this state. Thus, when the purchaser uses property in California, it is presumed to have been purchased for use in this state even if the property has been first functionally used outside of California. As explained in Regulation 1620(b)(3), property is presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into California. Since the aircraft was brought into California seven days after its purchase, it will be presumed to have been purchased for use in this state unless it is used or stored outside of California one-half or more of the six-month period beginning with January 12, 1995, the day the aircraft entered this state.

You indicate that on February 5, 1995, the aircraft was delivered to a company in Florida in order to undergo refurbishment expected to last approximately three months. You ask whether the refurbishment taking place in Florida is considered to be a storage or use outside of California. "Storage" includes any keeping or retaining for any purpose except sale in the regular course of business. (Rev. & Tax. Code § 6008.) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except for the sale of that property in the regular course of business. (Rev. & Tax. Code § 6009.) The

refurbishment of the aircraft in Florida would therefore be considered storage or use outside of California. If the time for refurbishment, added to any other storage and/or use taking place outside of California, equals or exceeds one-half of the six-month period beginning January 12, 1995, no California use tax will be due on the purchase price of the aircraft.

You state that the jet engine, purchased on January 5, 1995, was purchased in Canada and was expected to remain there for approximately two months while undergoing repairs. After completion of repairs, the jet engine was scheduled to be shipped to Florida to be attached to the aircraft. It is unclear how much time the repairs and attachment actually took.

If the jet engine was not brought into this state within 90 days of its purchase and did not enter California until after April 5, 1995, then prior out-of-state use, such as the scheduled repairs and attachment, in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California or time of storage for shipment to California, will be accepted as proof of an intent that the jet engine was not purchased for use in this state. (See Reg. 1620(b)(3).) If it was not purchased for use in this state, no California use tax will apply with respect to the purchase of the jet engine.

On the other hand, time during which the jet engine was being shipped to California or was being stored for shipment to California does not count toward the prior out-of-state use in excess of 90 days that will be accepted as proof of intent that the jet engine was not purchased for use in California. (See Reg. 1620(b)(3).) If prior out-of-state use, excluding time for shipment to California or time during which the jet engine was stored for shipment to California, does not exceed 90 days from the date of purchase to the date of entry into this state, R--- will owe California use tax measured by the sales price of the jet engine unless it is used outside of California one-half or more of the six-month period immediately following its first entry into California.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: --- District Administrator